

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the following discussion, is respectfully requested.

Claims 10 and 12-19 are pending; no claims are amended, newly added, or canceled herewith.

In the outstanding Office Action, Claims 10 and 12-19 were rejected under 35 U.S.C. § 103(a) as unpatentable over Laumen et al. (U.S. Pat. No. 6,396,423, hereafter Laumen) in view of Wang (U.S. Pat. No. 6,014,411). For the reasons discussed below, this rejection is respectfully traversed.

Independent Claim 10 recites, *inter alia*,

observing transmission conditions continuously to detect at least one dynamic parameter of the current transmission conditions ...

selecting dynamically as a function of the at least one dynamic parameter, a distribution of elementary coding step redundancies

Claims 12-19 depend from Claim 10.

The outstanding Office Action states at page 3 that Laumen discloses the claimed observing and dynamic selection steps. To support the assertion that Laumen discloses the claimed observing step, the outstanding Office Action cites to col. 1, line 60 - col. 2, line 44 of Laumen. More specifically, the Office Action indicates that it is relying upon the cyclic redundancy check or Reed-Soloman technique of error correction coding. However, there is no evidence in the record that either of these two error correction techniques include observing transmission conditions continuously to detect at least one dynamic parameter of the current transmission conditions.

In fact, the cited portion of Laumen does not disclose or suggest in any way observation of the transmission conditions to detect at least one dynamic parameter of the

current transmission conditions. Thus, it appears that the outstanding Office Action is alleging that the claimed step is inherent in Laumen.

As set forth in MPEP § 2112, the fact that a certain result or characteristic may occur be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993). Moreover, the mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Therefore, if it is the Office's position that the claimed feature is inherent in the teachings of Laumen, it is respectfully requested that a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art be provided. *See Ex Parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

At present, it is respectfully submitted that the outstanding Office Action has not satisfied the burden of proof required by MPEP § 2112. Accordingly, if this rejection is to be maintained, it is respectfully requested that teachings illustrating the inherency of the claimed features in Laumen be provided.

Additionally, as noted above, Claim 10 further recites selecting dynamically, as a function of the at least one dynamic parameter, a distribution of elementary coding step redundancies

The outstanding Office Action cites to col. 2, lines 16-37; col. 4, lines 8-40; col. 5, lines 3-65; and steps 1015 and 1016 shown in Figure 3 of Laumen to teach this claimed step. However, as noted above, Laumen does not detect at least one dynamic parameter of the current transmission conditions. As a result, Laumen necessarily fails to disclose or suggest

selecting dynamically, as a function of the at least one dynamic parameter, a distribution of elementary coding step redundancies.¹

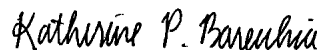
Therefore, as Laumen does not disclose or suggest the features of Claim 10, from which Claims 12-19 depend, it is respectfully submitted that the outstanding Office Action has not provided a *prima facie* case of obviousness. Accordingly, it is respectfully requested that this rejection be withdrawn.

Moreover, it is respectfully submitted that there is no basis in the teachings of either Laumen or Wang to support the applied combination. Certainly, the outstanding Office Action fails to cite to any specific teachings within either of these two references to provide the required motivation in support of this combination. As a result, it is respectfully submitted that the applied combination of Laumen and Wang is the result of hindsight reconstruction in view of the teachings of the present specification, and is improper.

Consequently, in view of the foregoing discussion, it is respectfully submitted that this application is in condition for allowance. An early and favorable action is therefore respectfully requested.

Respectfully submitted,

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¹ Because Wang is not relied upon to provide the features identified above as deficient within the teachings of Laumen, Wang is not substantively addressed herewith.